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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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John Doe 76C,

*Appellant,*

vs.

Archdiocese of St. Paul and Minneapolis,  
and Diocese of Winona,

*Respondents.*

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**APPELLANT'S BRIEF AND ADDENDUM**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iv

STATEMENT OF THE LEGAL ISSUES ..... 1

STATEMENT OF THE CASE ..... 2

STATEMENT OF THE FACTS ..... 3

    A. Defendants’ Knowledge of Adamson’s Sexual Abuse of Children  
    Before Risen Savior..... 3

    B. Adamson Transferred to Archdiocese ..... 7

    C. Appointment of Adamson to Risen Savior..... 10

    D. John Doe and His Family’s Involvement with Risen Savior ..... 11

    E. Fr. Adamson’s Involvement with the Minor John Doe..... 11

    F. Fr. Adamson’s Sexual Abuse of the Minor John Doe..... 11

    G. John Doe’s Discovery of the Abuse in 2001 or 2002 and Later  
    His Discovery of the Fraud..... 12

    H. Lawsuit Commenced ..... 12

    I. Frye-Mack Hearing Held..... 12

    J. Respondents’ Motion for Summary Judgment..... 13

ARGUMENT ..... 13

I. STANDARD OF REVIEW ON APPEAL FROM THE TRIAL COURT  
RULING FROM A FRYE-MACK HEARING AND SUMMARY  
JUDGMENT..... 13

II. THE TRIAL COURT ERRED WHEN IT EXCLUDED TESTIMONY OF  
REPRESSED MEMORY ..... 14

A.	There is Significant Legal Precedent in Minnesota and Across the Country for the Admission of Expert Testimony on Repressed Memory .....	14
B.	There is Significant Scientific Support Showing that Repressed Memory is Generally Accepted Within the Relevant Scientific Community and that it is Scientifically Reliable.....	21
1.	Repressed Memory is in the DSM-IV.....	21
2.	Repressed Memory is Universally Supported in the Scientific Research and is Scientifically Reliable .....	25
(1)	Case Studies of Repressed Memory.....	27
(2)	Prevalent Studies .....	29
(3)	Clinical Studies .....	31
(4)	Professional Surveys .....	32
(5)	Accuracy Studies.....	33
(6)	Mechanism Studies .....	33
(7)	Dissociation/Repression Studies .....	34
(8)	Physiological and Medical Studies .....	35
(9)	Therapy Studies.....	37
(10)	Literature Reviews .....	37
3.	The Trial Court Incorrectly Distinguished Between Research and Clinical Scientists Causing it to Ignore the 328 Research Articles that it Had in Evidence .....	38
4.	The Trial Court Improperly Attempted to Determine What is Good Science in Violation of <u>Goeb v. Tharaldson</u> .....	41

III.	THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT ON APPELLANT’S NEGLIGENCE AND VICARIOUS LIABILITY CLAIMS .....	43
IV.	THE TRIAL COURT IMPROPERLY DISMISSED PLAINTIFF’S FRAUD CLAIM .....	44
V.	CONCLUSION .....	49

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>FEDERAL CASES</b>	
<u>Celotex Corp. v. Catrett</u> , 477 U.S. 317,327, 106 S. Ct. 2548, 91 L.Ed. 2d 265 (1986) .....	14
<u>Clark v. Arizona</u> , 548 U.S. 735, 126 S.Ct. 2709 (2006) .....	24, 25
<u>Frye v. United States</u> , 293 F. 1013 (D.C.Cir. 1923).....	15, 42, 43
<u>Hoult v. Hoult</u> , 792 F.Supp. 143 (D. Mass. 1992).....	19
<u>Isley v. Capuchin Province</u> , 877 F.Supp. 1055 (D. Mich. 1995).....	17
<u>Klehr v. A.O. Smith Corp.</u> , 87 F.3d 231 (8 <sup>th</sup> Cir. 1996).....	48
<u>Shahzade v. Gregory</u> , 923 F.Supp 286 (D. Mass. 1996).....	17
<u>Teska v. Potlatch Corp.</u> , 184 F. Supp. 2d. 913 (2002) .....	14
<b>MINNESOTA CASES</b>	
<u>Antone v. Mirviss</u> , 694 N.W.2d 564 (Minn. Ct. App. 2005) .....	14
<u>Bertram v. Poole</u> , 597 N.W.2d 309 (Minn. Ct. App. 1999) .....	19
<u>Buller v. A.O. Smith Harvestore Prods., Inc.</u> , 518 N.W.2d 537 (Minn. 1994) .....	48
<u>D.M.S. v. Barber</u> , 645 N.W.2d 383 (Minn. 2002) .....	16

<u>Estate of Jones by Blume v. Kvamme,</u> 449 N.W.2d 428 (Minn. 1989) .....	2, 46
<u>Fabio v. Bellomo,</u> 504 N.W.2d 758 (Minn. 1993) .....	14
<u>Goeb v. Tharaldson,</u> 615 N.W.2d 800 (Minn. 2000) .....	1, 13, 41, 42, 43
<u>Hydra-Mac, Inc. v. Onan Corp.,</u> 430 N.W.2d 846 (Minn. Ct. App. 1988) .....	48
<u>Hydra-Mac, Inc. v. Onan Corp.,</u> 450 N.W.2d 913 (Minn. 1990) .....	48
<u>Illinois Farmers Ins. Co. v. Tapemark Co.,</u> 273 N.W.2d 630 (Minn. 1978) .....	14, 49
<u>Lickteig v. Kolar,</u> 782 N.W.2d 810 (Minn. 2010) .....	1, 16, 21
<u>Nord v. Herreid,</u> 305 N.W.2d 337 (Minn. 1981) .....	14, 49
<u>Sauter v. Sauter,</u> 244 Minn. 482, 70 N.W.2d 351 (1955) .....	14
<u>State by Cooper v. French,</u> 460 N.W.2d 2 (Minn. 1990) .....	14
<u>State v. MacLennan,</u> 702 N.W.2d 219 (Minn. 2005) .....	15
<u>State v. Roman Nose,</u> 649 N.W.2d 815 (Minn. 2002) .....	1, 15
<u>Toombs v. Daniels,</u> 361 N.W.2d 801 (Minn. 1985) .....	2, 45, 46
<u>Vacura v. Haar's Equip., Inc.,</u> 364 N.W.2d 387 (Minn. 1985) .....	14, 49
<u>W.J.L. v. Bugge,</u> 573 N.W.2d 677 (Minn. 1998) .....	1, 15, 16, 21

**OTHER STATES**

Ault v. Jasko,  
637 N.E.2d 870 (Ohio 1994) .....19

Commonwealth v. Shanley,  
919 N.E.2d 1254 (Mass. 2010).....17

Dalrymple v. Brown,  
701 A.2d 164 (Pa. 1997).....20

Doe v. Archdiocese of New Orleans,  
823 So.2d 360 (La Ct. App. 2002) .....17, 19

Doe v. Maskell,  
679 A.2d 1087 (Md. Ct. App. 1996) .....20

Doe v. Roe,  
955 P.2d 951 (Ariz. 1998) .....19

Doe v. Shults-Lewis Child and Family Services, Inc.,  
718 N.E.2d 738 (Ind. 1999).....19

Hearndon v. Graham,  
767 So.2d 1179 (Fla. 2000) .....19, 20

John Doe 1 v. Archdiocese of Milwaukee,  
734 N.W.2d 827 (Wis. 2007) .....2, 47

John Doe RG v. Archdiocese of Indianapolis,  
Civil Div. 10, Cause No. 49D10-0509-CT-035390 .....18

Logerquist v. McVey,  
1 P.3d 113 (Ariz. 2000) .....18

McClure v. Catholic Diocese of Wilmington, Inc., et al,  
New Castle County Super. Court No. 06C-12-235 CLS.....17

Moriarty v. Garden Sanctuary Church of God,  
511 S.E.2d 699 (S.C. Ct. App. 1999) .....20

Olsen v. Hooley,  
865 P.2d 1345 (Utah 1993) .....19

Pedigo v. Pedigo,  
292 Ill.App.3d 831 (Ill. Ct. App.1997).....19

<u>Peterson v. Huso,</u> 552 N.W.2d 83 (N.D. 1996) .....	20
<u>Sheehan v. Sheehan,</u> 901 S.W.2d 57 (Mo. 1995) .....	19
<u>State v. Hungerford,</u> 697 A.2d 916 (N.H. 1997) .....	20
<u>Travis v. Zitter,</u> 681 So.2d 1348 (Ala. 1996) .....	20
<u>Wilson v. Phillips,</u> 73 Cal App. 4 <sup>th</sup> 250 (Cal. Ct. App. 1999).....	19

**STATUTES, RULES**

Ariz. Rules of Evid. 702.....	18, 19
Minn. R. Civ. Proc. Rule 56.03.....	14, 48
Minn. R. Evid. Rule 702 .....	1, 14, 15, 43, 48
MINN. STAT. § 541.05 (2010) .....	2, 45
MINN. STAT. § 541.073 .....	16

## STATEMENT OF THE LEGAL ISSUES

1. Did the trial court err in excluding evidence of repressed memory?

At a Frye-Mack hearing, the Appellant introduced expert testimony that repressed memory appears as a diagnosis in the DSM-IV and 328 scientific research articles that prove the existence, accuracy and reliability of repressed memory. Despite this evidence, the trial court excluded evidence that Appellant experienced repressed memories pursuant to Minn. R. Evid. Rule 702.

Most apposite cases: State v. Roman Nose, 649 N.W.2d 815, 818-819 (Minn. 2002); W.J.L. v. Bugge, 573 N.W.2d 677, 681 (Minn. 1998); Lickteig v. Kolar, 782 N.W.2d 810 (Minn. 2010); Goeb v. Tharaldson, 615 N.W.2d 800, 815 (Minn. 2000).

Most apposite rule/statute: Minn. R. Evid. Rule 702.

2. Did the trial court err in dismissing Appellant's Negligence and Vicarious Liability Claims?

The trial court ruled that since evidence of repressed memory was excluded by the trial court (see above), Appellant could not prove that the applicable statute of limitations were tolled due to disability. As a result, the trial court ruled that the statute of limitations had expired on Appellant's claims.

Most apposite cases: See 1 above

3. Did the trial court err in dismissing Appellant's Fraud Claim?

The trial court ruled that Appellant should have discovered that he had been defrauded by the Respondents in the 1980's. As a result, the trial court ruled that the six-year statute of limitations had expired on Appellant's fraud claim.

Most apposite cases: Estate of Jones by Blume v. Kvamme, 449 N.W.2d 428, 431 (Minn. 1989); Toombs v. Daniels, 361 N.W.2d 801, 809 (Minn. 1985); John Doe 1 v. Archdiocese of Milwaukee, 734 N.W.2d 827, 843-845 (Wis. 2007).

Most apposite statute: Minn. Stat. § 541.05 (2010).

### STATEMENT OF THE CASE

The Respondents became aware that Fr. Thomas Adamson had sexually abused parish boys beginning in 1963 and continuing through 1981. Appellant was sexually abused by Fr. Thomas Adamson in 1981. Shortly after the sexual abuse, the Appellant repressed the memories of sexual abuse. In the summer of 2001 or 2002, Appellant had a flashback of the abuse by Fr. Adamson. Appellant did not have any memory of the sexual abuse by Fr. Adamson before that. Sometime after his memories of abuse surfaced, John Doe learned that the Respondents had appointed Fr. Adamson to Risen Savior parish despite knowing that Fr. Adamson was a child molester. John Doe commenced this action in 2006.

Prior to the trial in the above matter, the Respondents filed a motion to exclude expert testimony regarding repressed memories and the trial court conducted a Frye-Mack hearing. During the Frye-Mack hearing, Appellant called expert witnesses Constance Dalenberg, Ph.D. and James Chu, M.D. who testified that repressed memory is generally accepted in the relevant scientific community and that it is a reliable diagnosis. In support of their testimony, Appellant introduced that fact that repressed memory appears in the DSM-IV as an official diagnosis and 328 scientific research articles that proved that repressed memory exists and is reliable. The Respondents introduced the

expert testimony of Harrison Pope, M.D., Elizabeth Loftus, Ph.D. and William Grove, Ph.D, who testified that repressed memory is not generally accepted in the scientific community and is not reliable. Ultimately, the trial court ruled that the psychiatric condition of repressed memory should be excluded from evidence. Add.1-30. The trial court based its decision on an erroneous finding that repressed memory was not generally accepted in the relevant scientific community or scientifically reliable.

Subsequent to the trial court's ruling to exclude expert testimony of repressed memory, the Respondents moved for summary judgment claiming that the statute of limitations had expired on Plaintiff's claims. After arguments were heard, the trial court ruled that since Appellant could not introduce evidence that he had repressed the memories of sexual abuse, Appellant failed to prove that he had a disability that would toll the applicable statute of limitations on Appellant's negligence and vicarious liability claims. Add.31-52. The trial court then dismissed Appellant's negligence and vicarious liability claims because the statute of limitations had expired. Moreover, the trial court also ruled that the statute of limitations on Appellant's fraud claim had expired and the trial court dismissed that claim.

Appellant appeals both the December 8, 2009 and October 12, 2010 Orders.

### **STATEMENT OF THE FACTS**

#### **A. Defendants' Knowledge of Adamson's Sexual Abuse of Children Before Risen Savior.**

Both the Respondent Diocese of Winona ("Diocese") and the Respondent Archdiocese of St. Paul and Minneapolis ("Archdiocese") knew that Adamson was a

danger to children long before he ever was given access to Plaintiff.

The first known evidence that the Diocese knew that Fr. Adamson was a child sexual abuser and a danger to children is in 1963. In 1963, three priests of the Diocese, Fr. Donald Lovas, Fr. Connelly and Fr. Bertrand, conferred about Fr. Adamson's homosexual problems with little boys. A.1-6. Despite these known homosexual problems with little boys, Fr. Adamson was appointed the Superintendent of the Catholic Schools of St. Mary Grade School and Loretto High School in Caledonia, assigned to assist at St. John's Church and appointed as the Moderator of the Caledonia Deanery of the Council of Catholic Men. A.8-9. There is no evidence that any action was taken against Fr. Adamson during this period.

The next known evidence that the Diocese knew that Fr. Adamson was a child sexual abuser and a danger to children is in 1964. Initially in 1964, Fr. Adamson told fellow Diocese priest Fr. Donald Leary, that Fr. Adamson had a problem with a boy. A.10-12. Father Adamson also admitted this problem/abuse to Fr. Hubert Zeches of Defendant Diocese. A.17. Fr. Dittman, Vicar General of Diocese, also learned of the problem/abuse involving the boy. A.28-29. At that time, Vicar General Dittman told Diocese Bishop Fitzgerald about the problem/abuse of the boy. A.30. As a result, Bishop Fitzgerald confronted Father Adamson about Father Adamson's inappropriate sexual contact. A.32-35, A.45, A.47-48. Bishop Fitzgerald was shocked that this happened and transferred Adamson from his Superintendant position at Loretto High School in Caledonia, to an assistant principal position at Lourdes High School in Rochester effective November 30, 1964. A.49, A.52. There is no evidence that the

Diocese informed anyone at Lourdes High School about Fr. Adamson's incidents of sexual abuse of children.

The next evidence that the Diocese knew that Fr. Adamson was a child sexual abuser and a danger to children is between 1964 and 1967. During this period, Father Raymond Jansen of the Diocese learned that Fr. Adamson had asked a boy to undress in his office. A.18, A.26. Adamson admitted this to Father Jansen. (Id.) Fr. Adamson is then sent to therapy with Dr. Frances Tyce, for approximately 15 sessions over a three month period A.14-16. After learning of this abuse, Bishop Fitzgerald transferred Father Adamson to a Newman chaplain position at Lea College and Assistant Pastor at St. Theodore's Church in Albert Lea. A.53-54. There is no evidence that the Diocese informed anyone at Lea College or St. Theodore's Church about Fr. Adamson's numerous incidents of sexual abuse of children.

In 1973, the Diocese learned more about Fr. Adamson's sexual abuse spree. During 1973, Fr. Adamson admitted to Father Jansen that he had sexual contact with a boy in 1973 in Rochester, Minnesota. A.36-41. In addition, during that same year, Jay Klein told Bishop Watters that Father Adamson had sexual contact with Klein's three brothers when they were children. A.56-59. Jay Klein asked Bishop Watters to follow up with other victims who were also sexually abused by Fr. Adamson. A.60-62. Bishop Watters told Klein that they didn't need to do anything because "little boys heal." (Id.) Bishop Watters was the Bishop of the Diocese at that time. During that same year, Fr. Adamson admitted to Bishop Watters that he had engaged in sexual misconduct with a boy. A.42-43, A.46.

Unfortunately, 1974 brought even more reports that Fr. Adamson had sexually abused more boys. Four minor male students reported to Father Paul Suprenant that Adamson engaged in inappropriate behavior with them. A.66-70, A.73. Father Suprenant told Fidelois Logan the principal of the school. A.71. Father Thomas Jennings learned of this as well. A.72. Jennings and Suprenant told Monsignor Jansen about these reports. (Id.) Jennings and Suprenant were both priests of the Diocese of Winona. Bishop Watters learned of this abuse and referred Father Adamson for an evaluation by Dr. Frances Tyce. A.74. Dr. Tyce recommended in-patient therapy at the Institute of Living in Hartford, Connecticut A.75, A.76-95.

On April 30, 1974, a psychological evaluation was done on Fr. Adamson at the request of Dr. Tyce by a John R. Hawkinson, Ph.D. A.74. The May 5, 1974 Minutes of the Diocese Personnel Board indicate that “Fr. Tom Adamson is having a recurring problem” and discuss Adamson going to an institute in the East. A.75. On May 27, 1974, Fr. Adamson was cleared for treatment at a facility in Connecticut called the Institute of Living. A.96. Bishop Watters was notified that Fr. Adamson was scheduled to attend the treatment. (Id.) While being treated at the Institute of Living, Fr. Adamson kept in close contact with Bishop Watters. A.97-100. Upon discharge from the Institute of Living, Fr. Adamson was diagnosed with “Sexual Orientation Disturbance.” A.90.

Later in 1974, a victim of Fr. Adamson contacted Bishop Watters and threatened public exposure if Father Adamson was assigned to a parish in the Winona Diocese. A.44, A.50-51. Further, Sister Trueman told Bishop Watters that she had been contacted by John Doe II regarding Adamson’s sexual contact with his brother. A.102-107. In

addition, Fr. Roger Schiltz, a priest within the Diocese, was informed about allegations of Adamson's sexual involvement with boys. A.109-113. Also in 1974, Sister Michon Welsh, the principal of St. Francis school, which was in Defendant Diocese, found out that Father Adamson may have had sexual contact with minor boys. A.117. Welsh then met with Bishop Watters to discuss her concerns about Father Adamson and children. A.115-116. Moreover, also that same year, Fr. Laverne Trocinski learned from Bishop Watters that Adamson's problem was sexual touching of boys. A.119-122.

**B. Adamson Transferred to Archdiocese.**

In 1975, Fr. Adamson moved to St. Paul in order to take classes at the University of Minnesota and to participate in psychotherapy with Fr. Kenneth Pierre, a psychologist with the Consultation Services Center of the Archdiocese. A.123-125. While in St. Paul, Fr. Adamson lived and worked at St. Leo the Great Church. A.127. Both Bishop Watters from the Diocese and Archbishop John Roach were aware that Fr. Adamson was living, working and receiving psychotherapy while in the Archdiocese. A.124, A.127-128.

Prior to moving Fr. Adamson to the Archdiocese, Bishop Watters told Archbishop Roach of the rumors surrounding Adamson and the imprudence of assigning Adamson in the Winona Diocese. A.130. Bishop Watters was unwilling to discuss the matter further over the telephone. A.131. In addition, Bishop Watters told Archbishop John Roach that Adamson was treating with Father Ken Pierre. A.133. Bishop Watters also told Archbishop Roach that there was unsubstantiated homosexual contact. A.134. Because Adamson was treating with Pierre, Roach assumed that there was a problem. (*Id.*) In a

letter dated October 30 1984 from Bishop Watters to Archbishop Roach, Watters reminded Roach that in January of 1975, Watters informed Roach of the problems Adamson was having in the Winona Diocese, namely, complaints that he was sexually abusing minor boys. A.136.

Significantly, in April, 1975, it became very clear exactly how much was known about Fr. Adamson and exactly how dangerous he was. On April 17, 1975, Fr. Pierre from the Archdiocese's Consultation Services Center sent a letter to Bishop Watters requesting the Bishop to allow Fr. Adamson to return to the Diocese and be reassigned to a church. A.137-138. In response, in a letter dated April 19, 1975, Bishop Watters wrote to Fr. Pierre:

While I do not question your evaluation regarding the progress Father Adamson has made, I must also add that I am convinced that he doesn't even begin to appreciate the numbers of people in at least five different communities across the entire Diocese who have finally pieced together incidents occurring over a 15 year span and who now openly raise questions about the credibility of all priests. Obviously, I am writing to you in confidence. You would only have to struggle through the painful sessions I've had with heart-broken and bewildered parents who only now have come to discover the source of some of the problems of their sons.

A.139-140.

The victim and his family that had threatened to go public with their knowledge of Adamson learned that Father Adamson has been sent to the Archdiocese, and in response to their concern for future victims, Bishop Watters assured the family that Father Adamson will have no youth contact and that the Archdiocesan officials will be told that Father Adamson sexually abused boys in the Winona Diocese. A.62-64.

In January 1976, Bishop Watters called Archbishop Roach regarding Fr.

Adamson. According to a confidential memorandum written by Archbishop Roach:

I received a call from Bishop Loras Watters on January 23 concerning Father Thomas Adamson. Father Adamson's period of residence and work in the diocese was to have been completed this January. For reasons which Bishop Watters was unwilling to discuss on the telephone, but he promised to share with me later, he is asking that Father Adamson continue to work in the diocese for another year or year and a half.

A.141.

On February 10, 1976, Archbishop Roach assigned Fr. Adamson as the administrator at St. Boniface Church. A.142. There is no evidence that Archbishop Roach informed anyone at St. Boniface about Fr. Adamson's past sexual abuse of children.

In August 1977, Fr. Adamson was arrested. According to a criminal Complaint dated August 21, 1977, Fr. Adamson was charged with indecent exposure for exposing himself to a boy in the sauna. A.143. The boy was 16 years old. (Id.) According to Fr. Adamson, he was arrested because he attempted to solicit someone who he thought was seventeen for sex in the Sauna at Mendakota Country Club. A.19-25.

In November 1980, boys at Immaculate Conception church in Columbia Heights, within the Archdiocese, reported to Pastor Joseph Wajda that Fr. Adamson had sexually assaulted an eighth grade boy in the whirlpool at the YMCA. A.144-145. Fr. Wajda reported this information to Archbishop Roach and Fr. Robert Carlson, the Chancellor for the Archdiocese. (Id.) On November 24, 1980, Chancellor Carlson met with Fr. Adamson and informed Fr. Adamson about the allegations of sexual abuse in the Whirlpool. A.146. At that meeting, Fr. Adamson admitted the sexual contact with the

boy in the whirlpool. (Id.) In his report to Archbishop Roach, Chancellor Carlson noted: “It is my opinion that this situation is well known and just below the surface. I don’t think that we are dealing with an isolated instance, but I can’t prove that. There are some details I have decided not to put in writing, and would be happy to discuss them with you in person.” A.147-148.

As a result of the Whirlpool incident, Fr. Adamson was hospitalized. On January 4, 1981, Fr. Adamson entered St. Mary’s hospital under the care of Dr. Joseph Gendron. A.149. According to Chancellor Carlson, Fr. Adamson was to announce that he had resigned and returned to the Diocese. (Id.)

### **C. Appointment of Adamson to Risen Savior.**

Less than a month after Adamson’s hospitalization, on February 2, 1981, he was assigned as an Associate Pastor at the Church of the Risen Savior in Apple Valley. A.150. According to the letter from Archbishop Roach: “This appointment will not be published in the Catholic Bulletin at this time.” (Id.) To Bishop Carlson’s knowledge as of 1984, no parishioners had been informed of Adamson’s history of molestation of children at any time in any parish before 1984 by the officials of the Archdiocese or the officials of the Diocese of Winona. A.152. Carlson testified that he couldn’t think of a single time when the Archdiocese made a cleric’s sexual abuse public before a lawsuit was filed. A.154. In a letter to Adamson, Archbishop Roach wrote that “Priests, thank God, do enjoy the immediate and full confidence of our people.” A.155. When a Bishop appoints someone to a parish, he acknowledges that the priest can be trusted. A.157.

**D. John Doe and His Family's Involvement with Risen Savior.**

John Doe was involved in numerous activities at Risen Savior: altar boy, youth group, youth retreats, and leader/teacher for younger students. A.159.

Not only was John Doe a minor and involved a great deal at Defendant Archdiocese's parish, his family was also involved in all aspects of Risen Savior and much of their social life revolved around Risen Savior activities. A.162. John Doe's dad was a trustee at Risen Savior for 10 years, on the parish council for 10 years, was on the steering committee, was a Eucharistic minister and trained altar boys. A.165. John Doe's Mother was on the parish council at Risen Savior, she was a befriender minister (listening/caring ministry to ill or those that lost a loved one), and she taught grade school religion. A.170.

**E. Fr. Adamson's Involvement with the Minor John Doe.**

John Doe's parents allowed John Doe to play golf, tennis and go to the racquet ball club with Fr. Adamson. A.166-167; A.171-172. John Doe's dad trusted Father Adamson. A.168. Adamson was an honored guest in John Doe's home. A.160-161. Adamson supervised John Doe as an altar boy. (Id.) Adamson taught John Doe's religious education class. (Id.) Finally, Adamson told John Doe about becoming a priest. (Id.) It was an honor for John Doe to golf with a priest. A.184. It was also an honor or John Doe and his family to have Adamson in John Doe's life. A.159. John Doe did not know about Adamson's long history of abuse. (Id.)

**F. Fr. Adamson's Sexual Abuse of the Minor John Doe.**

When John Doe was in the 8<sup>th</sup> grade, in approximately 1981, Fr. Adamson

repeatedly sexually molested him. A.174-182. The abuse occurred in Adamson's car, in the golf course parking lot, at the racquetball club, and in John Doe's parents' home. (Id.) Some of the abuse involved Fr. Adamson touching John Doe's genitals. A.177-180.

**G. John Doe's Discovery of the Abuse in 2001 or 2002 and Later His Discovery of the Fraud.**

In the summer of 2001 or 2002, John Doe had a flashback of the abuse by Adamson. A.174. He didn't have any memory of the abuse before that. A.183. Sometime after his memories of the abuse came back John Doe learned that the Diocese and Archdiocese appointed Adamson to Risen Savior despite knowing he was a serial child molester.

**H. Lawsuit Commenced.**

John Doe commenced this action in 2006.

**I. Frye-Mack Hearing Held.**

As part of the lawsuit, the Respondents filed a motion to exclude expert testimony regarding repressed memories<sup>1</sup> under the Frye-Mack standard. During a three-day Frye-Mack hearing, Plaintiff presented the testimony of two expert witnesses, Constance Dalenberg, Ph.D. and James Chu, M.D., and introduced 340 exhibits that included 328 scientific research articles that proved that repressed memory was much studied, that repressed memory is a condition that is generally accepted within the relevant scientific community and that the diagnosis of repressed memory is scientifically reliable. In

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<sup>1</sup>For the purposes of this brief, the terms "repressed memory" and "dissociative amnesia" will be used interchangeably.

response, the Respondents presented the testimony of three expert witnesses, Harrison G. Pope, M.D., William M. Grove, Ph.D. and Elizabeth F. Loftus, Ph.D. as well as a number of exhibits.

After the hearing, the trial judge issued an order titled Findings of Fact, Conclusions of Law and Order dated December 8, 2009 where the Court granted the Respondents' motion to exclude expert testimony. Add.1-30.

**J. Respondents' Motion for Summary Judgment.**

Subsequent to this ruling, the Respondents filed motions for summary judgment, claiming that the statute of limitations had expired on Appellants claims prior to Appellant filing the current action. After a hearing, the trial judge issued an Order dismissing Appellant's claims because the trial court found that the statute of limitations had expired. Add.31-52. This appeal follows.

**ARGUMENT**

**I. STANDARD OF REVIEW ON APPEAL FROM THE TRIAL COURT RULING FROM A FRYE-MACK HEARING AND SUMMARY JUDGMENT**

In an appeal from a trial court's ruling after conducting a Frye-Mack hearing, this Court must consider two standards of review. First, on the issue of whether a particular principle or technique is generally accepted within the relevant scientific community, this Court of Appeals must review this issue de novo. Goeb v. Tharaldson, 615 N.W.2d 800, 815 (Minn. 2000). Second, on the issue of whether the particular principle or technique has foundational reliability, this Court must review that issue using the abuse of discretion standard. Id.

In an appeal from summary judgment, the appellate court determines whether there is a genuine issue of material fact for trial and whether the district court erred in its interpretation or application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990); Antone v. Mirviss, 694 N.W.2d 564, 568 (Minn. Ct. App. 2005). Summary judgment was not appropriate in this case because material fact issues are disputed. "Summary judgment is not an acceptable means of resolving triable issues... ." Teska v. Potlatch Corp., 184 F. Supp. 2d. 913 (2002), (citing Celotex Corp. v. Catrett, 477 U.S. 317,327, 106 S. Ct. 2548, 91 L.Ed. 2d 265 (1986)). Summary judgment may only be ordered if there is "no genuine issue of material fact. . . ." Minn. R. Civ. Proc. 56.03. The burden of proof on a motion for summary judgment is on the moving party, and the nonmoving party has the benefit of that view of the evidence most favorable to him. Sauter v. Sauter, 244 Minn. 482, 70 N.W.2d 351 (1955). The court is to draw all reasonable inferences in the light most favorable to the nonmoving party. Nord v. Herreid, 305 N.W.2d 337, 339 (Minn. 1981); Vacura v. Haar's Equip., Inc., 364 N.W.2d 387, 391 (Minn. 1985). See also Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). Therefore, summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented. Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630, 634 (Minn. 1978).

## **II. THE TRIAL COURT ERRED WHEN IT EXCLUDED TESTIMONY OF REPRESSED MEMORY**

### **A. There is Significant Legal Precedent in Minnesota and Across the Country for the Admission of Expert Testimony on Repressed Memory**

Scientific testimony by expert witnesses is governed by the Minnesota Rules of

Evidence. According to Minn. R. Evid. 702:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

In State v. Roman Nose, 649 N.W.2d 815, 818-819 (Minn. 2002), the Minnesota Supreme Court reviewed Minnesota case law on the issue of the introduction of scientific evidence:

As a result of *Frye* and *Mack*, a two-pronged standard has emerged in Minnesota that must be satisfied before scientific evidence may be admitted. First, a novel scientific technique that produces evidence to be admitted at trial must be shown to be generally accepted within the relevant scientific community, and second, the particular evidence derived from the technique and used in an individual case must have a foundation that is scientifically reliable.

Id. (Citations omitted.) See also State v. MacLennan, 702 N.W.2d 219, 230 (Minn. 2005).

Scientific expert testimony of repressed memory has been admitted in Minnesota courts for over a decade. For example, in W.J.L. v. Bugge, 573 N.W.2d 677, 681 (Minn. 1998), the Minnesota Supreme Court considered a sexual abuse case when it stated that:

Accordingly, the statute of limitations begins to run once a victim is abused unless there is some legal disability, such as the victim's age, or mental disability, such as repressed memory of the abuse, which would make a reasonable person incapable of recognizing or understanding that he or she had been sexually abused.

See also D.M.S. v. Barber, 645 N.W.2d 383, 389 (Minn. 2002).

Similarly, the Minnesota Supreme Court recently maintained its longstanding position on repressed memory in Lickteig v. Kolar, 782 N.W.2d 810 (Minn. 2010). In Lickteig, the Minnesota Supreme Court considered a case where the victim of sexual abuse occurring in approximately 1977, repressed her memories of the abuse until 2005. Id. at 811. Lickteig was filed in United States District Court for the District of Minnesota and on appeal, the Eighth Circuit Court of Appeals certified a question to the Minnesota Supreme Court asking whether the childhood sexual abuse statute of limitations found in MINN. STAT. § 541.073 should be applied retroactively. When answering in the affirmative, the Minnesota Supreme Court acknowledged that repressed memory affected the time in which the Minnesota Statute of limitations for sexual abuse began to run. Id. at 818. Specifically, the Minnesota Supreme Court stated “[I]f we apply the statute retroactively, **whether Lickteig suffered memory repression, which affects the timing of her knowledge, is a question of fact.**” Id. (emphasis added) The Court then ruled that Minnesota Statute section 541.073 applied retroactively. Id. at 819.

Consequently, the Minnesota Supreme Court has taken a clear position that evidence regarding repressed memory is to be admitted in Minnesota courts. This position is clear in Lickteig, and in W.J.L. Lickteig, 782 N.W.2d at 818, n 6; W.J.L., 573 N.W.2d at 681.

In addition to Minnesota, courts across the United States have admitted expert testimony of repressed memory. For example, courts in Michigan, Massachusetts, Louisiana and Delaware, have all determined that evidence of repressed memory should

go to the jury. See Isley v. Capuchin Province, 877 F.Supp. 1055, 1066 (D. Mich. 1995) (Court held that there was sufficient scientific reliability to allow the jury to hear expert testimony regarding repressed memory); Shahzade v. Gregory, 923 F.Supp 286, 290 (D. Mass. 1996), (Court cited to the DSM-IV when holding that repressed memory evidence was admissible.); Doe v. Archdiocese of New Orleans, 823 So.2d 360, 364-65 (La Ct. App. 2002) (Louisiana Court of Appeals ruled that it was proper to admit expert testimony on repressed memory.)

An analysis of the most recent rulings, reveal a clear trend of courts finding that repressed memory is generally accepted in the scientific community and scientifically reliable. For example, recent ruling in Delaware entered in April 2009 in McClure v. Catholic Diocese of Wilmington, Inc., et al, New Castle County Super. Court No. 06C-12-235 CLS, the court ruled:

The Court is satisfied that the concept of repressed memory/traumatic amnesia is generally accepted in psychiatry and its existence is set out in the DSM-IV-TR. The error rate of false memories is within the normal scientific margin of error. The Court is satisfied that sufficient medical and scientific support exists for the admission of testimony regarding repressed memory/traumatic amnesia under D.R.E. 702 and *Daubert*.

A.200-201.

Similarly, the Massachusetts Supreme Court recently upheld a criminal conviction for sexual abuse of a child that relied on sufficiently reliable expert testimony regarding repressed memories. Commonwealth v. Shanley, 919 N.E.2d 1254, 1266 (Mass. 2010). The Massachusetts case included some of the very same experts as those who testified in the present case, Drs. Chu and Loftus. On nearly identical facts regarding repressed

memory of childhood sexual abuse perpetrated by a clergy member, the Massachusetts Supreme Court held that the reliability of the theory of dissociative amnesia was supported in the record by expert testimony and a wide collection of clinical observations and a survey of academic literature. Id.

In Indiana, a trial court judge ruled that repressed memory was reliable. (John Doe RG v. Archdiocese of Indianapolis, Order Filed January 20, 2010, Civil Div. 10, Cause No. 49D10-0509-CT-035390). A.202-214. The court found the expert testimony on repressed memory was supported by empirical tests, published peer review, and documented acceptance in the scientific community. Id. at A.208.

Moreover, courts in Arizona and California have admitted expert testimony of repressed memory pursuant to Rule 702 (b). In Logerquist v. McVey, 1 P.3d 113, 117-118 (Ariz. 2000), the Arizona Supreme Court noted that the scientific support for repressed memory had been documented in numerous scientific reports for over a century. Id. The court also noted that repressed memory was so well accepted within the relevant scientific community that it had been incorporated in the DSM and was the topic of an official statement by the American Psychiatric Association on Memories of Childhood Sexual Abuse. Id. According to the court:

It is apparent we are not dealing with an alchemist attempting to change lead into gold or an astrologer predicting events from the movements of the stars but one of the leading researchers and authorities in behavioral science. It would be strange that a witness so well qualified and experienced would not be permitted to testify on an issue beyond the experience of the average juror.

Id. The court then proceeded to rule that expert testimony on the condition of repressed

memory would be allowed under Ariz. Rules of Evid. 702. Id. at 133 -134. See also Wilson v. Phillips, 73 Cal App. 4<sup>th</sup> 250, 255-56 (Cal. Ct. App. 1999) (Testimony of expert witness regarding repressed memory was admitted.)

In addition, in Doe v. Shults-Lewis Child and Family Services, Inc., 718 N.E.2d 738, 750 (Ind. 1999), the Indiana Supreme Court considered the issue of whether the plaintiff had repressed memories of childhood sexual abuse. When faced with the same arguments that the Defendants have argued in this case, the Indiana Supreme Court ruled “[I]n Fager we declined to declare repressed memory syndrome unreliable, and we decline to do so today.” Id. at 750, footnote 6.

In addition, numerous states have determined that introduction of evidence of repressed memory should be allowed to determine whether this condition should toll any statutes of limitations. In Olsen v. Hooley, 865 P.2d 1345, 1348-49 (Utah 1993) the Utah Supreme Court stated that “a substantial majority of courts that have addressed this issue have held that the repression of memories of childhood sexual abuse tolls the applicable statute of limitations.” Similarly, in Ault v. Jasko, 637 N.E.2d 870, 873 (Ohio 1994), the Ohio Supreme Court ruled that “the trend in other jurisdictions is to apply the discovery rule where repression of the sexual abuse has prevented the plaintiff from filing a claim within the applicable statutory limitations period.” See also Doe v. Roe, 955 P.2d 951, 960 (Ariz. 1998); Hearndon v. Graham, 767 So.2d 1179, 1186 (Fla. 2000); Pedigo v. Pedigo, 292 Ill.App.3d 831, 841 (Ill. Ct. App.1997); Doe v. Archdiocese of New Orleans, 823 So.2d 360, 366-67 (La Ct. App. 2002); Hoult v. Hoult, 792 F.Supp. 143, 145 (D. Mass. 1992); Bertram v. Poole, 597 N.W.2d 309, 312-13 (Minn. Ct. App. 1999); Sheehan

v. Sheehan, 901 S.W.2d 57, 59 (Mo. 1995); Peterson v. Huso, 552 N.W.2d 83, 86 (N.D. 1996); Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 709 (S.C. Ct. App. 1999). Hearndon v. Graham, 767 So.2d 1179, 1186 (Fla. 2000).

In contrast, some courts have excluded expert testimony of repressed memory. For example, in State v. Hungerford, 697 A.2d 916, 918 (N.H. 1997), New Hampshire Supreme Court excluded evidence of repressed memory in a case where memories were recovered in “memory retrieval therapy” and “inner child therapy” designed to recover memories of sexual abuse as a child. According to the court:

In a particular case, the court may be satisfied with the state of the scientific debate on the question of recovering repressed memories, and with the general indicators of reliability surrounding a particular recovered memory. If that memory is recovered in the context of therapy, however, we will be greatly concerned with the suggestiveness of the therapeutic process and its ability to skew memory and one’s confidence in memory.

Id. at 930.

In the current case, the recovered memories were not recovered in therapy. Therefore, it appears that Hungerford supports the admission of evidence related to repressed memory.

In Doe v. Maskell, 679 A.2d 1087, 1092 (Md. Ct. App. 1996), the court did not exclude repressed memory from evidence, the court, instead ruled that repressed memory did not toll the statute of limitations for sexual abuse. The admission of expert testimony on the issue of repressed memory was not determined. See also Dalrymple v. Brown, 701 A.2d 164, 171-172 (Pa. 1997) (Scientific validity of repressed memory not even discussed when court ruled that repressed memory did not toll the statute of limitations.); Travis v. Zitter, 681 So.2d 1348, 1354 (Ala. 1996) (Scientific validity not discussed when

court ruled that repressed memory was not a disability under Alabama law.) In Minnesota, the Supreme Court of Minnesota has already ruled that repressed memory does toll the applicable statute of limitations. Lickteig, 782 N.W.2d at 818, n 6; Bugge, 573 N.W.2d at 681. Thus, these cases cannot be followed.

In conclusion, Minnesota Supreme Court cases contemplate and approve of the introduction of evidence of repressed memory in order to toll any applicable statute of limitations. Further, it is clearly the trend for courts across the country to find that repressed memory is generally accepted within the relevant scientific community and that it is scientifically reliable. Finally, the cases that purport to oppose the introduction of repressed memory are factually and legally distinguishable. Thus, there is significant legal support for the introduction of expert testimony on repressed memory in the current case.

**B. There is Significant Scientific Support Showing that Repressed Memory is Generally Accepted Within the Relevant Scientific Community and that it is Scientifically Reliable**

**1. Repressed Memory is in the DSM-IV**

The most compelling evidence that repressed memory meets the first Frye-Mack requirement, general acceptance in the relevant scientific community, is that repressed memory appears in the DSM-IV. The DSM-IV is the official manual of the American Psychiatric Association that is the authoritative guide, or the “Bible,” of diagnoses of psychiatric disorders. Transcript of Frye-Mack Hearing (hereinafter “T.”) p. 199. The American Psychiatric Association is the national association for psychiatrists which has members from many diverse interests in psychiatry, psychology, social work and nursing.

T. 208; Add.53-63.

During the Frye-Mack hearing in this matter, the trial court heard testimony from James Chu, M.D., a member of the task force that created the dissociative disorders in the DSM-IV. James Chu, M.D. is one of the top trauma clinicians in the world. Frye-Mack Hearing Ex. (hereinafter “Ex.”) 729. Dr. Chu is a practicing board-certified psychiatrist who has treated patients in the area of trauma treatment for 30 years. Id. Dr. Chu is an Associate Professor of Psychiatry at the Harvard University Medical School and on staff at McLean Hospital, Harvard Medical School’s psychiatric hospital, where he established innovative clinical programs for the treatment of adults with trauma-related disorders. Id. Dr. Chu has held numerous positions at McLean Hospital including Chief of Hospital Clinical Services. Id. Dr. Chu is the author of the book *Rebuilding Shattered Lives: The Rational Treatment of Complex Post-Traumatic and Dissociative Disorders*, (1998), which has become an authoritative text concerning the treatment of trauma survivors. Id. Dr. Chu has been invited to give academic presentations on the issues concerning posttraumatic and dissociative disorders and the validity and reliability of memory throughout the United States, Canada, the Netherlands, Spain and New Zealand. Id. Dr. Chu is a Distinguished Fellow of the American Psychiatric Association (publisher of the DSM-IV diagnostic manual) and a Fellow and past president of the International Society for the Study of Trauma and Dissociation, and the recipient of several distinguished awards from that organization. Id. Finally, Dr. Chu was the Editor of the prestigious *Journal of Trauma & Dissociation* for six years. Id.

In addition, Dr. Chu is a clinician’s clinician. In his practice, Dr. Chu has seen

“dozens if not hundreds” of patients who have repressed and recovered memories. T. 217. In addition, Dr. Chu has also trained hundreds of other psychiatrists on issues surrounding repressed memory and trauma. T. 207–208. Dr. Chu believes that it is important that clinical perspectives be considered when evaluating repressed memory because clinicians regularly see a wide variety of patients who have recovered memories where researchers only have access to a very narrow group of simple patients. T. 225–226.

During his testimony, Dr. Chu testified that he was on the task force for dissociative disorders for the DSM-IV. T. 198, Add.63. The task force was comprised of a diverse group of experts within the dissociation field who covered the spectrum of philosophies regarding dissociative disorders. T. 202-03; Add.54. According to the DSM-IV:

We took a number of precautions to ensure that the Work Group recommendations would reflect the breadth of available evidence and opinion and not just the views of the specific members. After extensive consultations with experts and clinicians in each field, we selected Work Group members who represented a wide range of perspectives and experiences. Work Group members were instructed that they were to participate as consensus scholars and not as advocates of previously held views.

Add.54.

Before a diagnosis appears in the DSM-IV, it must be firmly rooted in the peer-reviewed scientific research. The diagnoses in the DSM-IV are based upon a firm base of both clinical and research evidence. T. 200. The process used by the DSM-IV Work Groups in deciding whether a diagnosis should be in the DSM-IV involved three stages: (1) comprehensive and systematic reviews of the published literature, (2) re-analyses of

already-collected data sets, and (3) extensive issue-focused field trials. Add.57. In fact, the “goal of the DSM-IV literature reviews was to provide comprehensive and unbiased information and to ensure that DSM-IV reflects the best available clinical and research literature.” Add.58.

The psychiatric condition of repressed memory is found in the DSM-IV as the diagnosis of Dissociative Amnesia. T. 206. Dissociative Amnesia is

**300.12 Dissociative Amnesia  
(formerly Psychogenic Amnesia)**

**Diagnostic Features**

The essential feature of Dissociative Amnesia is an inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by normal forgetfulness (Criterion A). This disorder involves a reversible memory impairment in which memories of personal experience cannot be retrieved in a verbal form (or, if temporarily retrieved, cannot be wholly retained in consciousness). . .

Dissociative Amnesia most commonly presents as a retrospectively reported gap or series of gaps in recall for aspects of the individual's life history, These gaps are usually related to traumatic or extremely stressful events. . .

Add.59.

Inclusion in the DSM-IV is absolute proof that repressed memory is generally accepted in the relevant scientific community. According to Dr. Dalenberg “the fact that it is in the DSM-IV is a sign of the consensus, that we agree as a psychological community that dissociative amnesia exists now . . .” T. 80.

In its December 8, 2009 Order, the trial court discounts the value of repressed memory appearing as a diagnosis in the DSM-IV. Specifically, the trial court refers to Clark v. Arizona, 548 U.S. 735, 774, 126 S.Ct. 2709, 2734 (2006) as standing for the

proposition that presence in the DSM-IV does not indicate that a diagnosis is generally accepted in the relevant scientific community. That is not the issue that was discussed in Clark. In Clark, the Court ruled that care must be taken to insure that simply because a person has a DSM-IV diagnosis does not mean that the person is insane or lacks the required *mens rea* to commit a crime. In Clark's case, the issue was whether his DSM-IV diagnosable mental disease was severe enough to render him insane under Arizona law. Id. The Court did not rule that the DSM-IV should not be used as evidence in court. Id.

As discussed above, the DSM-IV reflects a comprehensive and systematic review of the best available peer-reviewed, published literature and the consensus of diverse working groups within the fields of psychiatry and psychology. Add.54, Add.57. It is difficult to imagine a clearer representation of general acceptance within the relevant scientific community than inclusion as a diagnosis in the DSM-IV. Thus, Appellant met his burden to show that repressed memory is generally accepted within the relevant scientific community.

## **2. Repressed Memory is Universally Supported in the Scientific Research and is Scientifically Reliable**

Repressed memory is universally supported in the peer-reviewed, scientific literature as a valid and reliable psychiatric condition and diagnosis. A review of this body of scientific literature reveals that the condition of repressed memory is not only reliable, the research is unanimous that it is a valid, scientifically reliable psychiatric condition.

During the Frye-Mack hearing in this matter, this Court heard testimony from

Constance Dalenberg, Ph.D. Dr. Dalenberg is the Director of the Trauma Research Institute in San Diego, California and a Full Professor of Psychology at the California School of Professional Psychology. T. 7. Dr. Dalenberg has taught and teaches graduate and undergraduate courses in statistics, scientific methods, dynamics, treatment and prevention of sexual and physical abuse of children, forensic evaluation and testimony, cognitive psychotherapy, ethics, and trauma studies (holocaust, family violence, post-traumatic responses). Ex. 730. Dr. Dalenberg is the author of a book titled *Countertransference and the Treatment of Trauma*, published by the prestigious American Psychological Association in 2000. Id. Moreover, Dr. Dalenberg has researched and published extensively for over 20 years directly on the issue of child abuse, trauma and memory. Id.

During her testimony, Dr. Dalenberg presented an overwhelming number of research studies that establish repressed memory as a valid and reliable psychiatric condition. Specifically, Dr. Dalenberg presented scientific research studies that span the entire spectrum of scientific research, almost 25 years (1984-2008) and across multiple areas of trauma in support of the scientific reliability of repressed memory. T. 28-111; Ex. 401-728. During her testimony, Constance Dalenberg, Ph.D. testified that there are over a thousand articles on the topic of repressed memory. T. 28. In an effort to condense the research, Dr. Dalenberg selected approximately 328 peer-reviewed scientific research articles that confirm the existence and scientific reliability of repressed memory. T. 28.

In addition to the sheer number of research articles, the diversity of trauma studied

is also significant. Repressed memory is not just found in cases of childhood sexual abuse. T. 36. In fact, repressed memory has been noted in combat veterans, car accidents, physical abuse, Holocaust survivors, and Cambodian refugees. T. 36. The presence of repressed memory in such wide and diverse trauma populations is quite significant and proves that repressed memory is a widespread condition in those who have been traumatized.

In order to illustrate how thoroughly repressed memory has been studied and tested, Dr. Dalenberg divided the voluminous research into ten different categories of scientific research. T. 29–32. These categories are (1) case studies, (2) prevalent studies, (3) clinical studies, (4) professional surveys, (5) accuracy studies, (6) mechanism studies, (7) dissociation and repression studies, (8) physiological and medical studies, (9) therapy studies, and (10) literature reviews. T. 29–32. Each of these categories of articles studied repressed memory in unique ways and in the end, this research proves that repressed memory is a valid and scientifically reliable psychiatric condition. Each of these categories is discussed in more detail below.

### **(1) Case Studies of Repressed Memory**

Generally, a case study is an in-depth presentation of a case. T. 41–43. Case studies are usually written to help clinicians understand the phenomenology of something and what it actually looks like when the patient presents him or herself. T. 41–43.

One example of a case study is the 1999 study by Dennis Bull. Ex. 468. This case study involved a case where a 40 year old woman with a master's degree and no previous mental health problems, recovered memories of childhood sexual abuse by her father. T.

43; Ex. 468. In the study, it was noted that the patient's sister had witnessed the sexual abuse of the patient, yet the patient had no memory of the sexual abuse until she was 40 years old. Id. When the patient recovered the abuse memories, she required hospitalization. Id.

Another stunning example of a case study involving repressed memory is the 1997 study by Corwin and Olafson. Ex. 487. This case involved a situation where in 1984, a patient disclosed, on videotape, that she had been sexually abused. T. 45; Ex. 487. Eleven years later, the patient was unable to recall the sexual abuse. Ex. 487. The article describes how, again on videotape, the patient spontaneously recovered the memory of sexual abuse during therapy. Id. This case study is especially powerful because it is based on videotaped evidence that the patient recovered a previously unrecallable memory. Id.

In addition, in the 1998 case study by Duggal and Stroufe, the researchers had documented evidence that the patient had been sexually abused when she was four years old. Ex. 517, pp. 304 – 310. When the patient was sixteen years old, she denied having ever been sexually abused. Ex. 517, p. 312. The patient also denied having been sexually abused during an interview when she was seventeen years old. Ex. 517, p. 313. At age 19, the patient recovered the memories of sexual abuse by her father and confirmed that she did not have the memories of abuse for the preceding years. Id.

Further, Dr. Dalenberg noted that there were other notable case studies in evidence. Specifically, Dr. Dalenberg cited to the 1998 case study by Karon and Widener involving World War II combat veterans (Ex. 571) and the 2002 case study by

Witztum et al involving Vietnam combat veterans. Ex. 722. These studies reveal that repressed memory is a condition that appears in many different trauma populations. Additional case studies that support the condition of repressed memory that are in evidence are Alpert (1991) Ex. 403, Alpert (1994) Ex. 404, Arrigo and Pezdek (1997) Ex. 420, Cheit (1998) Ex. 477, Degun-Mather (2002) Ex. 509, Durst et al (1999) Ex. 518, Fujiwara et al. (2008) Ex. 538, Hopper and Van der kolk (2001) Ex. 559, Szajnberg (1993) Ex. 685, Tayloe (1995) Ex. 687, and Vattakatuchery (2006) Ex. 704.

## (2) Prevalent Studies

Prevalent, or prevalence, studies are typically studies done of groups of people to determine how many of them experienced repressed memory. T. 30. There are many prevalent studies contained in the 328 articles introduced as exhibits at the Frye-Mack hearing; however, there are a few worth highlighting.

In a study by Plaintiff's expert **James Chu**, M.D. et al (1999) in the prestigious *American Journal of Psychiatry*, ninety patients in the trauma unit at McLean Hospital were evaluated for amnesia. Ex. 480. The study found that there was a higher level of dissociative symptoms, including repressed memory/dissociative amnesia, in patients who had been traumatized compared to those who had not been traumatized. Id. Further, the study found that the younger the age of the trauma, the higher the number and level of dissociative symptoms. Finally, the study found that the vast majority of recovered memories occurred at home, alone or with family and friends and not during a therapy session. Id. This is consistent with John Doe in the current matter.

In a chapter in the 1999 book *Trauma & Memory*, researchers Brewerton et al.

published the results of a national study where 3006 women were evaluated for a number of psychiatric disorders, including repressed memory. T. 48; Ex. 442. Although complex, the results of the study indicated that a significant number of the women could not remember parts of a traumatic experience. Ex. 442. Similarly, studies by Briere and Conte (Ex. 453) evaluating 450 adults who were being treated by sexual abuse and finding 59.3% of those subjects experienced repressed memory. Ex. 453. Also, Carlson et al in a 1997 study interviewed 217 psychiatric inpatients where 41% of those who had been sexually abused experienced repressed memory. Ex. 473. Finally, Elliott from UCLA Medical Center reported findings in 1997 that of 724 individuals responding to a questionnaire, 32% experienced repressed memory. Ex. 519. These are only examples of the almost one hundred studies that all found at least 19% of those evaluated experienced repressed memory. T. 58–59.

Additional examples of prevalent studies include Binder et al. (1994) Ex. 430, Crowley (2007) Ex. 496, Dale et al. (1998) Ex. 498, Epstein & Bottoms (2002) Ex. 523, Gold et al. (1999) Ex. 547, Melchart (1996) Ex. 612, Melchart (1997) Ex. 613, Melchart (1999) Ex. 615, Schultz et al. (2003) Ex. 673, Van Ommeren et al., (2001) Ex. 701, Williams (1994) Ex. 716, and Wilsnack et al. (2002) Ex. 721.

One of the concerns regarding prevalent studies is that the question used in ascertaining whether a person has experienced repressed memory is sometimes unclear. In this case, there are between 20 and 25 prevalence studies in the admitted exhibits and close to 100 studies in existence. T. 56, 59. In almost every study, the researchers revised and improved their method of ascertaining whether a subject experienced

repressed memory. **No matter how the question about repressed memory was asked, not a single study of the almost 100 studies, reported less than 19% of the sexually abused subjects experienced repressed memory.** T. 58–59.

### (3) Clinical Studies

Clinical studies are typically studies in which inpatient or other clinical groups are studied to determine what percentage experienced repressed memory. T. 30. These studies may focus on a particular group, like Eriksson and Lundin, 1996, who found 29% of survivors of the Estonia shipwreck disaster experienced repressed memory. Studies may also be designed to evaluate consecutive admissions to a hospital. Ex. 524. In Sar et al., 2007, the researchers screened 43 consecutive admissions to a psychiatric emergency unit and found that 7% of these patients experienced dissociative amnesia (it is unknown how many of the original 43 patients had been traumatized). Ex. 664.

As discussed, Dr. James Chu was a pioneer in trauma and dissociative amnesia studies. Dr. Chu's 1990 clinical research study published in the *American Journal of Psychiatry* is proof of that fact. In this clinical study, **James Chu** and Diana Dill examined whether dissociative symptoms are specific to patients with histories of abuse. Ex. 479. Ninety-eight female psychiatric inpatients completed self-report instruments that focused on childhood history of trauma, dissociative symptoms, and psychiatric symptoms in general. Id. Sixty-three percent of the subjects reported physical and/or sexual abuse. Id. Eighty-three percent had dissociative symptom scores above the median score of normal adults, and 24% had scores at or above the median score of

patients with posttraumatic stress disorder. Id. Subjects with a history of childhood abuse reported higher levels of dissociation. Id.

Additional examples of clinical studies that are in evidence include Banyard and Williams (1999) Ex. 422, Carlson and Rosser-Hogan (1993) Ex. 474, Harvey and Bryant (1999) Ex. 554, Johnson et al. (2006) Ex. 565, Leong et al. (2006) Ex. 600, Roe and Schwartz (1996) Ex. 653, Tezcan et al. (2003) Ex. 692, and Van Duijl et al. (2005) Ex. 700.

#### **(4) Professional Surveys**

Professional surveys are studies that survey mental health professionals about their experiences with repressed memory. T. 30. For example, in the survey by Pope (Kenneth) and Tabachnick, 1995, the researchers surveyed licensed psychologists and learned that 73% had encountered at least one patient who had recovered a previously forgotten memory. Ex. 645.

Additional professional surveys that are admitted into evidence include Andrews (1997) Ex. 413, Andrews et al. (1999) Ex. 416, Andrews et al., (2000) Ex. 417, Feldman-Summers and Pope (1994) Ex. 526, Fish and Scott (1999) Ex. 528, Legault (2007) Ex. 599, Palm and Gibson (1998) Ex. 632, and Polusny and Follette (1996) Ex. 639.

In contrast, Defense expert Dr. Harrison Pope also conducted a professional survey and published the results in 1999. T. 78-79. In Dr. Pope's article, only 9% of those surveyed advocated that dissociative amnesia should be eliminated from the DSM-IV. Id. Another 40% of those surveyed had reservations about the diagnosis, and 35% were satisfied with the diagnosis as is. Id. Unfortunately, it is impossible to tell who is

in that middle 40%. Dr. Dalenberg testified that she herself is in the 40% group because she does not agree with the way that the dissociative amnesia diagnosis interacts with the posttraumatic stress disorder diagnosis. T. 78–79. Clearly, Dr. Dalenberg supports the position that repressed memory is valid and scientifically reliable. T. 112.

### (5) Accuracy Studies

Accuracy studies focus on how accurate repressed memories are as compared to continuous memories. T. 90. The study by Williams, 1995, the researchers compared the accuracy of recovered memories to subjects who had not repressed their memories of the abuse. Ex. 717. Williams found that there were some errors in both repressed memories as well as continuous memories, but that both type of memories were equally accurate. Id. Similarly, in a study by **Dr. Dalenberg** herself, 1996, seventeen patients who had recovered memories of abuse were evaluated to determine which type of memory was more accurate. Ex. 500. The results mirrored that of Williams above, namely that repressed/recovered memories were equally as accurate as continuous memories of abuse. Id.

### (6) Mechanism Studies

Mechanism studies are studies that test a particular mechanism for recovered memory. In Mechanic, Resick, et al., 1998, the researchers compared the competing theories of memory decay, normal forgetting versus an unconscious memory process such as dissociation. Ex. 611; T. 98–99. In the study, 37% of the participants experienced memory deficits for parts of the sexual assault at two weeks following the assault. Ex. 611. However, many of those participants' memories improved over the

next three months. Id. These findings were seen to be inconsistent with normal forgetting and memory decay because under normal conditions, memory gets worse over time, not better. Id. Thus, the researchers determined that the results were more consistent with an unconscious memory process such as dissociation. Id.

In Melchart, 1996, the researchers evaluated abuse victims who had experienced some form of memory disruptions regarding their abuse. T. 102; Ex. 612. A large percentage of the test subjects indicated that they would not have been able to remember the abuse during these disrupted periods and when asked why, a good number responded that they had repressed the memories because they were too painful to remember. Id.

Finally, in Dale et al, 1998, the researchers conducted in-depth interviews of child abuse victims in order to determine whether they had periods of amnesia relating to the abuse. T. 102–104; Ex. 498. Significantly, thirty percent (30%) reported recovering memories after a period of complete nonawareness of the abuse. Ex. 498.

In addition, the following research articles that are currently in evidence are also mechanism studies: Anderson and Green (2001) Ex. 410, Anderson (2001) Ex. 412, Brewin and Andrews (1998) Ex. 450, Epstein and Bottoms (2002) Ex. 523, Freyd et al. (2001) Ex. 536, Lang et al. (2001) Ex. 590, Melchart (1997) Ex. 613, Melchart (1999) Ex. 615, Richards and Gross (2000) Ex. 650 and Williams et al (2002) Ex. 720.

#### **(7) Dissociation/Repression Studies**

Dissociation/repression studies are studies that test the mechanism causing repressed memory. T. 105. In Akyuz et al. (2007), the researchers examined childhood abuse, dissociation and post-traumatic stress disorder (PTSD) among male prisoners. Ex.

401. A sample of 101 randomly selected male prisoners was interviewed using different objective psychological tests to determine the frequency of dissociative experiences, trauma and PTSD. Id. The study found that dissociative experiences such as amnesia were more frequent in the population studied than the general population. Id.

In Ashley and Holtgraves (2003), the researchers found the repressors revealed memory problems for negative childhood emotional experiences. Ex. 421. Similarly, in Becker-Blease and Freyd (2007), the researchers studied dissociative experiences by sex offenders both when they were children and when they committed offenses themselves. Ex. 425. The study found that the sex offender's amnesia for the offense committed was related to dissociation. Id.

Other dissociation/repression studies include Brewin (1997) Ex. 444, Brewin and Andrews (1997) Ex. 449, Briere (2006) Ex. 454, Brown et al. (2005) Ex. 467, Cutler et al. (1996) Ex. 497, Derakshan and Eysenck (1997) Ex. 511, DePrince and Freyd (2004) Ex. 512, Dickson and Bates (2005) Ex. 515, Hock and Krohne (2004) Ex. 557, Holtgraves and Hall (1995) Ex. 558, Kunzendorf and Moran (1994) Ex. 588, Lambie and Baker (2003) Ex. 589, Newman and Hedberg (1999) Ex. 629, and Rohrman et al. (2003) Ex. 656, Sander et al. (2003) Ex. 663.

### **(8) Physiological and Medical Studies**

Medical studies are studies that measure brain activity and hormone levels of those who experienced repressed memories and those who did not. T. 106-108. In Bremner (1999), the researchers described the neurological and hormonal changes that occur as a result of trauma and the changes in portions of the brain that control memory. Ex. 438.

Further, in Bremner (2001) the researcher noted that changes in brain structures and systems mediating memory offer a possible explanation for delayed recall of childhood abuse in patients with abuse-related PTSD. Ex. 439. Brain areas affected by traumatic stress are involved in memory and the modulation of emotion. Id. Stress also results in acute and chronic changes in neurochemical systems that strengthens or weakens the laying down of memory traces. Id. Patients with PTSD have alterations in a broad range of memory functions. Id. PTSD patients also show changes in structure and function in brain regions mediating memory as well as in brain chemical systems involved in the stress response. Id.

Moreover, in Kanaan et al. (2007), the researchers performed functional Magnetic Resonance Imaging (fMRI) on a patient who had repressed traumatic memories. Ex. 569. In the study, researchers conducted fMRI scans of the patient's brain while she was thinking about a traumatic event of which the patient had a continuous memory and then conducted fMRI scans of the patient's brain when she thought about the memories that she had recently recovered. Id. The results of the study revealed that different portions of the brain were stimulated when the patient thought about the continuous memory than when she thought about the recovered memory. Id.

Additional physiological and medical studies that investigate brain and neurochemical activity related to repressed memories are Benight et al. (2004) Ex. 427, Bremner et al. (1995) Ex. 441, Elzinga et al. (2005) Ex. 521, Fukuzako et al. (1999) Ex. 539, Joseph (1998) Ex. 567, Joseph (1999) Ex. 568, Kopelman et al. (1994) Ex. 579, Koston et al. (2007) Ex. 581, Luine et al., (1994) Ex. 606, Markowitsch (1999) Ex. 607,

Markowitsch et al. (1997) Ex. 608, Mendolia (2002) Ex. 616, Morrison et al. (2004) Ex. 622, Moulds and Bryant (2007) Ex. 624, Scaer (2001) Ex. 666, Shevrin et al. (2002) Ex. 674, Woodson et al. (2003) Ex. 723, and Yasuno et al. (2000) Ex. 724.

### **(9) Therapy Studies**

Therapy studies are studies in which people with recovered memories go through therapy and the studies look at the results of the therapy of they are literature reviews on how to treat people with recovered memories of abuse. T. 108. Two significant examples of this body of research and literature are the books by **James Chu** titled *Rebuilding Shattered Lives: The Responsible Treatment of Complex Post-Traumatic and Dissociative Disorders*, John Wiley & Sons 1998 and **Constance Dalenberg** titled *Countertransference and the Treatment of Trauma*, American Psychological Association 2000. T. 109.

Additionally, the following research articles are in evidence and examples of therapy studies: Berliner and Briere (1999) Ex. 428, Briere (1997) Ex. 452, Cameron (1996) Ex. 472, Courtois (1996) Ex. 488, Courtois (1997) Ex. 490, and Taylor et al. (2002) Ex. 689.

### **(10) Literature Reviews**

Literature reviews are all kinds of reviews that are on the state of research for repressed memory. T. 110. Examples of this type of research article that are in evidence include Brewin (1996) Ex. 443, Brewin (1998) Ex. 445, Brewin (2004) Ex. 447, Brown (1995) Ex. 456, Brown (2002) Ex. 462, Brown (2004) Ex. 463, Brown (2006) Ex. 466, **Dalenberg** (2006) Ex. 501, Davies et al. (1998) Ex. 507, DelMonte (2000) Ex. 510,

Flathman (1999) Ex. 529, Freyd (1994) Ex. 532, Gleaves (1996) Ex. 542, Gleaves et al. (2004) Ex. 544, Kluft (1997) Ex. 574, Knapp and VandeCreek (1999) Ex. 576, Knapp and VandeCreek (2000) Ex. 577, Leavitt (2002) Ex. 597, Pettifor et al. (2001) Ex. 633, Pope, K. (1996) Ex. 641, Reisner (1996) Ex. 649, Schooler (1994) Ex. 670, Sierra et al. (2007) Ex. 677, Spiegel and Cardena (1991) Ex. 683, and Van der hart et al. (1999) Ex. 696.

Despite this thorough study of repressed memory, there has not been a single empirical (data based) study that has invalidated the existence or scientific reliability of repressed memory. In fact, just the opposite. Despite such a thorough testing, the research overwhelmingly supports repressed memory as a valid and scientifically reliable psychiatric condition.

### **3. The Trial Court Incorrectly Distinguished Between Research and Clinical Scientists Causing it to Ignore the 328 Research Articles that it Had in Evidence**

In its Order, the trial court found significant that there was a “deep split” between the research-focused part of the psychiatric/psychological community and the clinically-focused part of the psychiatric/psychological community. Add.20–22. According to the trial court, Dr. Dalenberg and Dr. Chu are clinically-focused and Dr. Pope, Dr. Loftus and Dr. Grove are research-focused. Id. According to the trial court, this division prevented it from concluding that repressed memory is generally accepted in the relevant scientific community. Add.20. The trial court’s conclusions are problematic because Dr. Dalenberg and Dr. Chu are not exclusively clinically-focused experts. In fact, Dr. Dalenberg and Dr. Chu are both researchers and clinicians in the field of trauma.

Dr. Dalenberg not only teaches and sees patients, but she is also a distinguished researcher having conducted research and written books and numerous articles directly on the issue of child abuse, trauma and memory for over 20 years. Ex. 730. The same can be said for Dr. Chu. Dr. Chu teaches, sees patients and also conducts scientific research directly on the issue of trauma and memory. Ex. 729. In fact, some of the leading research on the topic of repressed memory was conducted by Dr. Chu and his Harvard-based research team. Ex. 480. The record reveals that it was Drs. Dalenberg and Chu who presented the only empirical research studies on the issue of repressed memory. To somehow paint these two distinguished experts as only clinical and not research-based is a significant error. The trial court's erroneous categorization of the experts in this case led to error in its ruling. There is no "deep split" between clinical members of the psychiatric/psychological community and research members of the psychiatric/psychological community. Scientists who conduct research on trauma have produced significant evidence of repressed memory. When the dust clears, this Court has diverse and reliable scientific research that supports the general acceptance and scientific reliability of repressed memory.

Further, even though Dr. Pope and Dr. Loftus are considered researchers, neither presented evidence to the trial court supporting their position. When asked about the 328 studies and articles that were offered into evidence by the Plaintiff, Dr. Pope acknowledged that there were dozens of empirical case studies, almost one hundred empirical prevalence studies, and dozens of empirical clinical studies that directly examined the memory of traumatized patients and test subjects. T. 381-382.

However, when the scientific support upon which Dr. Pope relied was examined, it was revealed that the support had almost no empirical support whatsoever. When Dr. Pope was questioned about the thirty three sources appearing on the “Do Not Be Mislead” and “Examples of papers and books from 1990 – 2009” presentation slides, Dr. Pope had to admit that only one was an empirical study involving test subjects. T. 383–386; Ex. 1003. The rest were literature reviews that did not add any new information to the scientific discussion of repressed memory. Id.

Further, when Dr. Pope was asked about the 77 articles involving trauma victims upon which he relied for his testimony, Dr. Pope was forced to admit that his reliance may have been misplaced. When questioned about his reliance on these 77 studies, Dr. Pope admitted that most of these studies did not even ask the patients or test subjects about their memories for the traumatic events. T. 386. When questioned about his statement that there wasn’t even a passing mention of amnesia in those 77 articles, Dr. Pope had to further admit that in fact amnesia was mentioned in a number of the studies, despite the fact that memory was not a focus of the research. T. 342, 386–392.

Finally, Dr. Pope also admitted that he has never published any empirical studies involving trauma victims where memory was the primary focus of the study. T. 398. In fact, Dr. Pope’s main focus is research in the Biological Psychiatry Laboratory at MacLean Hospital where he focuses his research on eating disorders, drug and steroid use. T. 400–403. It is understandable that with this focus, that Dr. Pope has never published an empirical study involving trauma victims and their memory.

Dr. Loftus is in a similar position to Dr. Pope when it comes to empirical scientific

research support for her position. When asked about four articles upon which Dr. Loftus relied, Dr. Loftus admitted that none of these articles was an empirical research study. T. 516–517. In addition, Dr. Loftus admitted that despite at least 70 prevalence studies that have been conducted regarding the prevalence of repressed memory, there has never been a study where zero patients reported experiencing repressed memory. T. 549–550. Similarly, Dr. Loftus admitted that she did not know of any clinical studies where zero patients reported having repressed memories. T. 552. Dr. Loftus also admitted that her laboratory studies upon which she heavily relies, have been criticized as not being generalizable to trauma populations. T. 530.

No matter how well-known Dr. Pope and Dr. Loftus are and no matter how many publications each has, it does not make up for the absence of any empirical scientific studies that support their positions. Match this vacuum of research to Appellant’s 328 research studies that are currently in evidence and the fact that repressed memory appears as an official diagnosis in the DSM-IV. This contrast clearly supports the position that repressed memory is generally accepted and scientifically valid. Consequently, expert testimony and evidence on the subject of repressed memory must be allowed.

**4. The Trial Court Improperly Attempted to Determine What is Good Science in Violation of Goeb v. Tharaldson**

In its December 8, 2009 Order, the trial court mistakenly assumes the position of a scientist when analyzing the scientific research support for repressed memory. Specifically, the trial court found that the 328 studies did not provide sufficient information about the scope of the test subject’s amnesia and did not establish the

accuracy of recovered memories. Add.26–27. According to the trial court, the studies cited by Appellant that were designed as retrospective studies (asking test subjects whether there was a time that they didn't remember, couldn't remember, or remembered less of the sexual abuse) were scientifically unreliable. Add.27. The trial court made this determination despite direct testimony by Appellant's experts to the contrary. Further, the trial court also made the determination that prospective studies (where sexual abuse is documented and then, years later, the individual is asked about the abuse) were equally unreliable. Id. The trial court made this determination despite citing to only one study. Id. In like fashion, the trial court discounted the case studies, accuracy studies and clinical experience testimony by Appellant's experts as well. Id. at Add.28. The trial court apparently did not consider the myriad of other studies, like the clinical studies, mechanism studies and physiological and medical studies. (See section 2 above), that had similar findings to the discounted studies.

It is exactly this approach that is prohibited by the Minnesota Supreme Court. In Goeb v. Tharaldson, 615 N.W.2d at 812 – 13, the Minnesota Supreme Court specifically rejected the Daubert approach where a judge is allowed to determine what is good science and which studies are valuable and which studies are not. Instead, the Court continued its reliance upon Frye, and ruled that a trial court must rely on the experts to assess scientific validity of a technique. Id. at 813; Frye v. United States, 293 F. 1013 (D.C.Cir. 1923). Under Frye, it is the experts who should have the determinative voice. Id.

In this case the trial court improperly attempted to determine what is good science

when it decided which study was properly designed and which study was not. Add.27–29. The trial court is not entitled to make such an expert determinations. Instead, the trial court must allow the expert witnesses and the research studies serve to as the source of whether there is scientific reliability.

To summarize, the trial court refused to consider the DSM-IV diagnosis of dissociative amnesia in its decision despite the fact that the DSM-IV represents the current state of the science and has painstakingly summarized the contents of the published literature to come up with the diagnostic criteria for dissociative amnesia. Add. 57. The trial court refused to consider 328 research studies supporting the general acceptance and scientific validity of repressed memory claiming that these studies were not properly designed. Add.27–29; Exhibits 401–728. Finally, the trial court refused to consider the testimony of Dr. Constance Dalenberg and Dr. James Chu where both testified that repressed memory was generally accepted in the scientific community and scientifically reliable. By so doing, the trial court mistakenly attempted to determine the state of the science and failed to allow the most qualified experts to be the determinative voice in violation of Goeb and Frye. Goeb, 615 N.W.2d at 813. Consequently, the trial court abused its discretion and the trial court’s ruling must be reversed.

### **III. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT ON APPELLANT’S NEGLIGENCE AND VICARIOUS LIABILITY CLAIMS**

In its December 8, 2009 Order, the trial court ruled that Plaintiff did not prove that the psychiatric condition of repressed memory was generally accepted in the relevant scientific community or sufficiently reliable under Minn. R. Evid., Rule 702. Add.1-30.

In addition, in its October 12, 2010 Order, the trial used its December 8, 2009 finding as the reason for the court's finding that the statute of limitations had expired on all claims. Add.31-52. Regarding Plaintiff's negligence and vicarious liability claims (Counts I, II, III and IV), the trial court ruled that without testimony about repressed memory, Plaintiff could not prove that he was entitled to the tolling of the statute of limitations due to disability:

Since the Court has already ruled that evidence of repressed and recovered memory must be excluded, Plaintiff is unable to produce evidence of a legal disability which would toll the statute of limitations beyond the six-year period. Thus, Defendants are entitled to summary judgment with respect to Counts I, II, III, and IV of Plaintiff's Complaint.

Add.51.

This ruling depends entirely upon the trial court's erroneous December 8, 2009 Order. Had the trial not excluded expert testimony on the issue of repressed memory then the Plaintiff would have proven that the statute of limitations on his negligence and vicarious liability claims was tolled due to being disabled by experiencing repressed memories of the sexual abuse. It follows that a reversal of the trial court's December 8, 2009 Order will also serve to reverse the trial court's October 12, 2010 Order as it relates to Appellant's negligence and vicarious liability claims.

#### **IV. THE TRIAL COURT IMPROPERLY DISMISSED PLAINTIFF'S FRAUD CLAIM**

As discussed above, the Plaintiff was defrauded by both the Diocese and the Archdiocese. The Diocese was aware that Fr. Adamson had a long history abusing parish boys beginning in 1963 and continuing through his assignment to Risen Savior parish in

1981 (See Statement of Facts above). A.1-157. Despite knowing that Fr. Adamson was a child abuser and despite having the duty to disclose material facts to Appellant, the Diocese and the Archdiocese represented to Appellant and his family that they believed that Fr. Adamson was safe around children by assigning Fr. Adamson to Risen Savior parish. Add.51-52.

In his Complaint, the Appellant brought a claim for fraud. In response, the Respondents moved for summary judgment claiming that the statute of limitations had expired on Appellant's fraud claim. In its October 12, 2010 Order, the trial court granted the Respondents' motion for summary judgment ruling that as a matter of law, Appellant filed his fraud claim too late.

Plaintiff's fraud claim is timely. A fraud cause of action shall be commenced within six years of "the discovery by the aggrieved party of the facts constituting the fraud" MINN. STAT. § 541.05 (2010); A.51. This means that "the six-year period begins to run when the facts constituting fraud were discovered or, by reasonable diligence, should have been discovered." Toombs v. Daniels, 361 N.W.2d 801, 809 (Minn. 1985). Here, Plaintiff didn't even know that he was sexually abused by Adamson until 2001 or 2002. (John Doe 30, Ex. 212) He didn't discover that the Respondents knowingly placed a child molester at Risen Savior and allowed that child molester to access kids, including Appellant, until sometime after he had a memory that he was sexually abused in 2001 or 2002. Plaintiff commenced this case in 2006. Accordingly, Plaintiff commenced his fraud claim within six years of discovering it.

Unfortunately, in this case, the trial court made several erroneous findings

regarding material facts which caused an erroneous result. According to the trial court, “Plaintiff was aware of the fact that Adamson was a danger to children in the 1980’s.” Add.52. As evidence of this knowledge, the trial court relied upon the fact that the Appellant “learned through his family and church community in 1984 that Adamson had been accused of sexually abusing children.” Id. Specifically, Appellant’s mother discussed the allegations with him in the mid 1980’s, there was extensive publicity in the media detailing those allegations in the late-1980’s, and Appellant discussed the allegations and alleged abuse with his girlfriend in the 1990’s. Id. In addition, the trial court relied upon statements that were made to Fr. Thomas Doyle that, “at the time of the alleged abuse, Plaintiff felt emotionally paralyzed, shocked, isolated, confused, and was deathly afraid to tell anyone of the abuse due to his family’s relationship to Adamson and the Church.” Id. Accordingly, the trial court then ruled that Plaintiff should have learned in the exercise of reasonable diligence of the facts constituting the fraud in the 1980’s. Id. This ruling is based upon a mistaken understanding of material facts.

The Minnesota Supreme Court has made it clear that in a fraud case, “the question of when discovery could or should have reasonably been made is one of fact.” Estate of Jones by Blume v. Kvamme, 449 N.W.2d 428, 431 (Minn. 1989); Toombs v. Daniels, 361 N.W.2d 801, 809 (Minn. 1985) (holding “when fraud reasonably should have been discovered is also a question of fact”). Accordingly, the trial court’s finding that Plaintiff should have discovered the fraud in the 1980’s was error and must be reversed.

Appellant could not discover that he had been defrauded unless he had a memory that he was sexually abused himself. According to the Complaint, Respondents

misrepresented their knowledge of Fr. Adamson's sexually abusive past and Appellant was sexually abused as a result. A.197–198. The Appellant cannot have reasonably discovered a fraud until he understands that he has been injured by that fraud. Even if the Appellant knew of allegations that Adamson had abused children in the past, because it did not personally involve himself (at least as far as he knew at the time), he had no reason to use reasonable diligence to discover the fraud. Appellant did not know that Adamson had sexually abused Appellant when he was a child until 2001 or 2002. As a result, the fraud statute of limitations did not accrue until, at the earliest, when Appellant remembered that Adamson had sexually abused him.

A second factual error that was made by the trial court was finding in the mid-1980's when Appellant's family, church community and media reports informed him that Fr. Adamson had been accused of sexually abusing parish boys, that this constituted discovering the fraud of the Diocese and Archdiocese. Learning that Fr. Adamson had sexually abused other boys does not put Appellant on notice that the Diocese and Archdiocese knew that Fr. Adamson was a child abuser and despite that knowledge placed Fr. Adamson in a position where he could abuse more children.

This very same issue arose in John Doe 1 v. Archdiocese of Milwaukee, 734 N.W.2d 827, 843-845 (Wis. 2007), where the Wisconsin Supreme Court ruled that, in the case of fraud, knowledge that someone had been sexually abused by a priest does not mean that a person would be on notice that the Archdiocese knew that the priest had a prior history of sexually abusing children and yet placed him in a position where he would molest more children.

Consequently, Plaintiff was not put on notice that the Respondents had committed a fraud. In Minnesota, a plaintiff must exercise reasonable diligence only when he or she has notice of a possible cause of action for fraud. Buller v. A.O. Smith Harvestore Prods., Inc., 518 N.W.2d 537, 542 (Minn. 1994)(emphasis added). See also Klehr v. A.O. Smith Corp., 87 F.3d 231, 237 (8<sup>th</sup> Cir. 1996) (*quoting Buller v. A.O. Smith Harvestore Prods., Inc.*, 518 N.W.2d 537, 542 (Minn. 1994); Hydra-Mac, Inc. v. Onan Corp., 450 N.W.2d 913, 919 (Minn. 1990)(“the requirement of reasonable diligence imposes an affirmative duty to investigate upon a party who is aware of facts that might constitute a possible cause of action for fraud”). A party is under no duty to investigate a fraud it has no reason to suspect. Hydra-Mac, Inc. v. Onan Corp., 430 N.W.2d 846, 854 (Minn. Ct. App. 1988). Without notice of a possible cause of action for fraud, Plaintiff had no duty to exercise reasonable diligence to uncover the fraud.

Finally, the trial court made an erroneous conclusion regarding Appellant’s statements to Fr. Doyle. It is important to remember that Appellant had no memory of the sexual abuse until 2001 or 2002. A.183. When Plaintiff described feeling emotionally paralyzed, shocked, isolated, and confused, it was part of the memories that he recovered in 2001 or 2002. Plaintiff did not have memory of experiencing those feelings and emotions prior to 2001 or 2002. The trial court erred when it assumed that the Appellant had a memory of experiencing these emotions at the time of the sexual abuse in 1981.

In this case, there is a dispute of a number of material facts. According to Minn. R. Civ. Proc. Rule 56.03, summary judgment may only be ordered if there is no genuine issue of material fact. The trial court is to draw all reasonable inferences in the light most

favorable to the nonmoving party. Nord v. Herreid, 305 N.W.2d at 339; Vacura v. Haar's Equip., Inc., 364 N.W.2d at 391. Summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented. Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630, 634 (Minn. 1978). The trial court's erroneous factual findings upon which it based its decision violates this longstanding precedent. Therefore, the trial court's ruling must be reversed.

## V. CONCLUSION

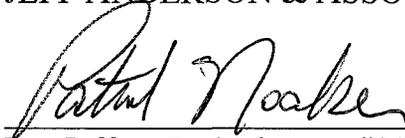
In order for expert scientific testimony to be admissible, the science must be generally accepted in the relevant scientific community and scientifically reliable. In this case, Plaintiff has established that repressed memory is generally accepted in the relevant scientific community by establishing that repressed memory is in the American Psychiatric Association's universally accepted DSM-IV and supported by robust and diverse, peer-reviewed scientific research and literature that spans almost 25 years. Moreover, the Minnesota Supreme Court has approved admission of expert testimony on the topic of repressed memories over a decade ago. Consequently, expert testimony of repressed memory must be allowed in the current matter.

Further, the trial court erred when it made a number of factual findings that is used as the basis for finding that Appellant should have discovered fraud. These factual conclusions involving material facts violate decades of Minnesota case law that requires that the trial court draw all reasonable inferences in the light most favorable to the Appellant and that summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented.

Respectfully submitted,

Dated: January 4, 2011.

JEFF ANDERSON & ASSOCIATES, P.A.

A handwritten signature in cursive script, appearing to read "Patrick W. Noaker", written over a horizontal line.

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that Appellant's Brief in Case No. A10-1951 complies with Minnesota Rules of Appellate Procedure 132.01, Subd. 3(a)(1) and that the brief contains 13,501 words. The brief was prepared in Microsoft Office Word 2007.

  
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